

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
March 9, 2005

ITEM: 6

SUBJECT: Cleanup and Abatement Order No.R9-2005-0033 for discharges of waste to the City of Oceanside MS4 and Pilgrim Creek in violation of Construction Storm Water Order 99-08-DWQ and Waste Discharge Requirements Order No.2001-184. Fieldstone Communities Morro Hills Villages C, D, E and G, Oceanside, San Diego County. (*Christopher Means*).

PURPOSE: Affirm the issuance of Cleanup and Abatement Order No. R9-2005-0033 and adopt Tentative Addendum No. 1 to the CAO.

PUBLIC NOTICE: The Agenda notice for the March 9, 2005, Regional Board meeting serves as the public notice for this item. A copy of the agenda was provided to the legal counsel for Fieldstone Communities Inc. via email on February 18, 2005.

DISCUSSION: On January 26, 2005 and pursuant to California Water Code section 13304, the Executive Officer issued Cleanup and Abatement Order No. R9-2005-0033 (Document No.2) to Fieldstone Communities Inc. (hereinafter Discharger) for discharges of sediment and sediment laden water to the City of Oceanside Municipal Separate Storm Sewer System (MS4) and tributaries to Pilgrim Creek, resulting from construction activities associated with the Morro Hills Villages C, D, E and G project. Cleanup and Abatement Order No. R9-2005-0033 requires Fieldstone Communities Inc. to (1) cleanup and abate the waste discharged, (2) immediately comply with all requirements of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ and Waste Discharge Requirements Order No. 2001-184, (3) if necessary utilize advanced treatment technologies to filter any polluted runoff discharged from the site, (4) submit a technical report documenting compliance with directive No. 2 of the CAO by February 15, 2005, (5) conduct an immediate assessment of erosion and sediment control Best Management practices after each significant rainfall event, and (6) submit status reports documenting compliance with Order 99-08-DWQ after each significant rainfall event.

The CAO was issued based upon findings of significant violations during two inspections of the subject site. On January 4, 2005, the discharger was observed pumping sediment and sediment-laden water without filtration from an impoundment in Fieldstone's Village G directly into the City of Oceanside's MS4 system. The pumping of polluted runoff into the City's MS4 took place just hours after the City of Oceanside had discussed storm water related compliance issues with all the developers on site and had issued a citation to the discharger. A subsequent inspection on January 12, 2005 confirmed that the discharger had not been implementing adequate erosion and sediment control BMP's in accordance with the requirements of the Construction Storm Water Permit. Due to the size of the project, and the significant violations noted in the inspections the Executive Officer issued the CAO, requiring the Discharger to take necessary remedial action to abate the threat of pollution or nuisance.

In a letter dated February 15, 2005 (Document 5), the discharger requested a public hearing at today's meeting to clarify:

- (a) the definition of a "significant rainfall event", which is referred to in Directive No. 4 and No. 5 of the CAO, and
- (b) the criteria of using the "Best Available Technology Standard (BAT)" for the discharge in Directive No. 3 and for terminating the reporting requirement in Directive No. 5.

Tentative Addendum No. 1 (Document No. 3) to CAO No. R9-2005-0033 was prepared to address the above issues. Specifically, the tentative Addendum will revise the CAO to cite both the Best Conventional Control Technology (BCT) as well as Best Available Technology Economically Achievable (BAT) to be consistent with the requirements of Order 99-08-DWQ; to define the term "significant rainfall event" as a period of when 1 or more inches of rain occurs from the start of precipitation to the end of precipitation, followed by three consecutive dry days. In addition, the tentative Addendum will correct the numbering of the Directives.

Agenda items 6 & 7 share the same common issues. The Regional Board issued two almost identical CAO's to Fieldstone Communities Inc. and Florida Southchase LP for violations observed at the Morro Hills construction project. Morro Hills is a master planned community in Oceanside that was originally covered under a single Construction Stormwater permit under the ownership of Florida Southchase LP. A portion of the project (Villages C, D, E, and G) was sold to Fieldstone Communities Inc., who subsequently obtained coverage under the Construction Stormwater Permit for their property, which is directly adjacent to the Florida Southchase LP property. Both dischargers have

retained the same legal counsel, and are submitting reports jointly to comply with the directives of their individual CAO's.

KEY ISSUE: Fieldstone Communities Inc. failed to implement best management practices at its Morro Hills Villages C, D, E and G project site, resulting in discharges of excessive amounts of sediment and sediment-laden water in violation of Order No. 99-08-DWQ, and Order No. 2001-184.

LEGAL CONCERNS: NONE

**SUPPORTING
DOCUMENTS:**

1. Transmittal letter dated January 26, 2005
2. Cleanup and Abatement Order No. R9-2005-0033
3. Tentative Addendum No. 1 to CAO No. R9-2005-0033
4. Inspection Report, January 4, 2005
5. Inspection Report, January 12, 2005
6. February 15, 2005 letter from Foley & Lardner, Attorneys at Law

COMPLIANCE: Since issuance of the Cleanup and Abatement Order No. R9-2005-033 the discharger has repaired the slopes damaged by erosion, and implemented erosion control BMPs including straw blankets on slopes, sprayed erosion control, and have improved and increased the capacity of their sediment basins and impoundments. An advanced sediment filtration unit is now on site in the event that it is necessary to discharge captured runoff offsite. The discharger is thus far in compliance with the reporting requirements contained in the CAO directives.

RECOMMENDATION: Affirmation of the issuance of Cleanup and Abatement Order No. R9-2005-0033 and adoption of Tentative Addendum No. 1 to Order No. R9-2005-0033 is recommended.